Crl.A.No.415 of 2001

The Appellant/ Accused were directed to be released on bail by the order of this Court dated 29.5.2001 and made in Crl.M.P.No.2728/01.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.415 of 2001

1. A.Devadoss
2. J.Neelakandan
3. L.Ramesh
4. D.Johnson
5. S.Vinayagam
6. B.Parthiban
7. R.Raghu
8. S.Manimaran
9. B.Sampath .. Appellants (A1, A2, A3, A4, A5, A6, A7, A8 and A9)

vs.

State: rep.by
Inspector of Police
V-1,Villivakkam Police Station
Chennai-49 .. Respondent

This appeal has been preferred against the Judgment dated 30.3.2001, in S.C.No.253 of 1998 on the file of VII Additional Sessions Judge, Chennai.

For Appellants : Mr.S.Doraisamy

For Respondent : Mr.V.P.Balasubramaniam
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred against the judgment in S.C.No.253 of 1998 on the file of VII Additional Sessions Judge, Chennai. There were totally 22 accused, who have been charged under Sections 147,148,341, 427, 452, 307,324,326 and 302 of IPC.

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2. After taking the case on file, the learned X Metropolitan Magistrate, Egmore, Chennai, had issued summons to the accused and on their appearance , copies under Section 207 of Cr.P.C. were furnished to the accused and since the case is triable by the Court of Sessions, the learned X Metropolitan Magistrate, had committed the case to the Principal Sessions Judge, Chennai. On the appearance of the accused, the learned Sessions Judge had framed charges against the accused and when questioned the accused, pleaded not guilty.

3. Before the trial Court, P.Ws 1 to 5 are injured witnesses. P.W.6,P.W.7,P.W.8, P.W.9, P.W10, P.W.11, P.W.12, P.W.13, P.W.14, P.W.15 , and P.W.16 have not supported the case of the prosecution and hence they were treated as hostile witnesses.

3a. P.W.1 has not implicated any of the accused in the crime but P.W.1 has preferred a complaint with the police at the Kilpauk Medical College Hospital, while he was under treatment on 21.8.1996 at about 10.00p.m.

3b. P.W.30 is the Investigation Officer in this case. According to him, the then Inspector of Police Thiru Sundaramurthy, who is now no more , had visited the Kilpauk Medical College Hospital at 10.00p.m., after knowing about the occurrence, had received Ex P1 complaint from P.W.1, who registered the case in Villivakkam Police Station Crime No.66 of 1996 under Sections 147,148,452,341,427,324,307 and 302 of IPC. Ex P83 is the First Information Report.

3c.The said Inspector of Police Mr.Sundaramurthy had visited the place of occurrence, prepared ExP84 Observation Mahazar in the presence of witnesses and also had drawn a rough sketch Ex P85. He had recovered M.O.33 blood stained sand and M.O.34 sample sand from the place of occurrence and also recovered M.O.35(series) blood stained wooden pieces under Ex P86 Mahazar in the presence of witnesses. At about 2.00a.m., on the following day, he had recovered M.O.36(series) blood stained sand and also sample sand M.O.37 and four blood stained wooden reapers M.O.38 (series) under Ex P87 mahazar from the house of P.W.4 Ramesh. He has also recovered M.O.39 blood stained sand and M.O.40, sample sand from the place of occurrence where the corpse of the deceased was lying under Ex P88 mahazar. M.O.41 broken glass pieces were recovered under Ex P89 Mahazar from the place of witness Lenin. He has also recovered blood stained M.O.1 shirt from the witness Santhosh(P.W.2) and M.O.2 blood stained lungi under Ex P90 mahazar. At about 4.15 a.m., he had recovered from P.W.4 Ramesh, blood stained lungi M.O.27 and M.O.29 blood stained Banian and M.O.42, blood stained shirt from P.W.3 Suresh.M.O.4, Shirt.M.O.28 blood stained shorts were also

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recovered from P.W.3 Suresh under ExP91 mahazar.

3d. He went to the Stanley Medical College Hospital and recovered M.O.30, Saree ,M.O.31 Jacket from Pappathy, who was taking treatment at Ward No.17 under Ex P92 Mahazar. He has examined the witnesses and recorded their statements. He had conducted inquest before the Panchayatars. ExP93 is the inquest report. He had sent the corpse for post mortem through P.W.19, who had identified the corpse to the post mortem doctor and after post mortem, he had placed the corpse in the mortuary and recorded the confession of A1 and EX P94 is the admissible portion of the confession statement of A1. On the basis of it, A1 had taken him near the east railway gate, Villivakkam and took out M.O.15, iron pipe from the hidden place, which was recovered under Ex P95 Mahazar.

3e. He has also arrested the accused Sudhakar, Johnson, Balaji, Baskar @ Auto Sankar, Elagovan and has recorded the confession statement of Johnson. The admissible portion of the confession statement of accused Johnson Ex P96 and Ex P97 is the admissible portion of the confession statement of accused Balaji. Ex P98 is the admissible portion of the confession statement of accused Bhaskar. Ex P99 is the admissible portion of the confession statement of accused Sudhakar. Ex P100 is the admissible portion of the confession statement of accused Elangovan. M.O.11 , the iron pipe taken out and produced by the accused Johnson from the bush, which was recovered on confession under Ex P101 Mahazar. M.O.24 , the iron pipe taken out from the hidden place and produced by the accused Balaji, which was recovered on confession under Ex P102. M.O.18 , the iron pipe taken out from the hidden place and produced by the accused Baskar @ Auto Shankar, which was recovered on confession under Ex P103. M.O.20, the iron pipe taken out from the hidden place by the accused Sudhakar, which was recovered on confession under Ex P104. M.O.21 , the iron pipe taken out from the hidden place and produced by the accused Elangovan, which was recovered on confession under ExP105 Mahazar. He has examined the witnesses and recorded their statements.

3f. He has arrested the accused Neelakandan, Ramesh, Raji, Parthiban, and Manimaran near Thirumangalam Bus stand and recorded the confession statement of Neelakandan. The admissible portion is ExP106. The admissible portion of the confession statement of the accused Ramesh is Ex P107. The admissible portion of the confession statement of the accused Raji is Ex P108. The admissible portion of the confession statement of the accused Parthiban is Ex P109. The admissible portion of the confession statement of the accused Manimaran is Ex P110.

3g. M.O.7 ,the knife taken out from the hidden place and produced by the accused Neelakandan was recovered under Ex P111

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Mahazar. M.O.25 , the iron pipe taken out from the hidden place and produced by the accused Ramesh was recovered under Ex P112. M.O.10 , the iron pipe was taken out from the hidden place and produced by the accused Raji was recovered under Ex P113 mahazar. M.O.8 the blood stained knife taken out from the hidden place and produced by the accused Parthiban, was recovered under Ex P114 mahazar. M.O.9 , the knife taken out from the hidden place and produced by the accused Manimaran was recovered under Ex P115 Mahazar. He has also arrested the accused Sampath, Vinayagam, Raman, Lakshmanan, Lawrence and Samson and recorded their confession statements. Ex P116 is the confession statement of Sampath . ExP117 is the confession statement of the accused Vinayagam. Ex P118 is the confession statement of the accused Raman. Ex P119 is the confession statement of the accused Lakshmanan. Ex P120 is the confession statement of the accused Lawrence. Ex P121 is the confession statement of the accused Samson.

3h. The accused took the Investigation Officer and produced the weapon used by them in the occurrence. M.O.5 , the knife taken out and produced by Sampath, was recovered under Ex P122 Mahazar. M.O.17 , the iron pipe taken out from the hidden place and produced by the accused Vinayagam, was recovered under ExP123 Mahazar. M.O.23 , the iron pipe taken out from the hidden place and produced by the accused Raman was seized under Ex P124 Mahazar. M.O.12 , the iron pipe was taken out from the hidden place and produced by the accused Lakshmanan, was recovered under Ex P125 Mahazar. The iron pipe produced by the accused Lawrence was recovered under ExP126 Mahazar. M.O.19 , the iron pipe was taken out and produced by the accused Samson was recovered under Ex P127 Mahazar. The accused were produced before the Judicial Magistrate for remand.

3i. M.O.43, the Sandal coloured polyster shirt recovered from the corpse of the deceased was produced by Grade I P.C. Krishnakumar which was seized under Ex P128 Mahazar. On 3.7.1996, the Investigation Officer had arrested the accused Kabilan and Kothandaraman and recorded their confession statements. Ex P129 is the admissible portion of the confession statement of the accused Kabilan. Ex P130 is the admissible portion of the confession statement of the accused Kothandaraman. The accused Kabilan had taken out from the hidden place and produced M.O.26 iron pipe was recovered under Ex P131 Mahazar. M.O.22 Iron pipe taken out from the hidden place and produced by the accused Kothandaraman was recovered under ExP132 Mahazar.

3j. The accused Kannan and Raghu were arrested on 11.7.1996. ExP133 is the confession statement of the accused Raghu. Ex P134 is the confession statement of the accused Kannan. The accused Raghu had taken out from the hidden place the blood stained knife M.O.6 and produced was recovered under ExP135 Mahazar. M.O.16 taken out

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from the bush and produced by the accused Kannan, was also recovered under ExP136 Mahazar. Both the accused were remanded to judicial custody.

3g. He had given Ex P56 requisition to the Court for sending the material objects connected with this case for chemical examination.ExP57 is the order of the Judicial Magistrate for sending the material objects for chemical examination. Ex P.137 is the biological report. Ex P138 is the Serologist's report . Ex P139 is the wound certificate relating to Pappathy.

4. After the death of the previous Investigation Officer, Thiru Sundaramurthy P.W.30 Shanmugam, became the Investigation Officer in this case and on 28.2.1996 at 9.45 a.m., he had arrested the accused Gandhi and recorded his confession statement under Ex P140. On the basis of the confession statement, M.O.13 was taken out from the hidden place and produced by him was recovered under Ex P141 Mahazar.

4a. P.W.17 is the doctor who had examined Santhosh(P.W.2) on 23.6.1996 and on examination, he would say that a fracture on his right leg was found, after taking X-Rays, P.W.2 was discharged on 25.6.1996.. Ex P54 is the wound certificate. The doctor has opined that it is an injury which is grievous in nature. P.W.18 is the doctor, who had conducted postmortem on the corpse of Mathi @ Mathivanan. The doctor has opined that the death would have occurred some 12 hours to 18 hours prior to post mortem . Ex P55 is the post mortem certificate.

4b. P.W.20 is an Assistant in the property room in Chief Metropolitan Magistrate's Court. He had entered 21 items of M.Os in this case in the relevant register kept in the property room and has assigned property No.875/1996 and as per the requisition Ex P57 of the Investigation Officer, the material objects were sent for chemical examination. Ex P58 is the letter of requisition by the Court.

4c. P.W.21 is the Photographer, who had taken M.O.32 photographs and negatives for the place of occurrence. P.W.22 has not supported the case of the prosecution and hence he was treated as a hostile witness. P.W.23, the doctor, who had examined P.W.4 and issued ExP73 copy of the accident register and examined Pappathy and issued ExP74 and the same day, he has examined P.W.3 Suresh for the injuries, he had sustained and issued Ex P75 copy of the accident register on the same day, he had examined Babu and issued Ex P76 copy of the accident register and he has also examined Santhosh (P.W.2) for the injuries, he had sustained and issued Ex P77 copy of the accident register.

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4d. P.W.24 has examined Ramesh(P.W.4) and issued Ex P78 copy of the accident register. P.W.25 has examined Pappathy and issued Ex P79 copy of the accident register. P.W.26 has not supported the case of the prosecution and hence he was treated as a hostile witness. P.W.27, the doctor, who would depose that he knows the signature of Dr.Thiyagarajan who had gone to Saudi Arabia and Ex P.80 is the wound certificate which contains the signature of Doctor Thiyagarajan, which was issued for having examined Suresh(P.W.3) by Doctor Thiyagarajan. P.W.28 has not supported the case of the prosecution and hence he was treated as a hostile witness. P.W.29 knows the signature of Dr.Saraswathi, who had examined P.W.4 Ramesh and issued ExP81 copy of the accident register. Ex P78 is the wound certificate issued to Ramesh. Dr. Saraswathi has also examined P.W.3 Suresh and issued Ex P82 the copy of the accident register and Ex P80 is the wound certificate. After completing the investigation and after following the formalities, P.W.30 has filed the charge sheet against the accused.

5. When the incriminating circumstances were put to the accused, they have denied their complicity with the crime.

6. After going through the evidence both oral and documentary, the learned trial Judge has come to a conclusion that A1 to A9 alone are guilty under Sections 326 r/w 149 IPC,148 IPC, 452 IPC and under Sections 324 IPC r/w 149 IPC. A1 to A9 were convicted under Section 326 IPC r/w 149 IPC to undergo three years rigorous imprisonment and slapped a fine of Rs.250/- each with default sentence. Under Sections 148 IPC, and 452 IPC and under Sections 324 r/w 149 IPC , A1 to A9 were sentenced each to undergo one year rigorous imprisonment and slapped a fine of Rs.250/-each with default sentence. A1 to A9 were acquitted from the remaining charges. A10 to A22 were acquitted from all the charges levelled against them. Aggrieved against the findings of the trial Judge, A1 to A9 have preferred this appeal.

7. Now the point for determination in this appeal is whether the conviction and sentence imposed by the learned trial Judge in S.C.No.253 of 1998 on the file of VII Additional Sessions Judge, City Civil Court, Chennai against A1 to A9 is sustainable for the reasons stated in the memorandum of appeal?

8. Heard Mr.S.Doraisamy, learned counsel for the appellants and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the State and considered their rival submissions.

9.The Point:
Even though A1 to A9 were convicted by the learned Sessions Judge under Sections 148,452, 324 and 326 of IPC, the overt-act attributed against each of the above said accused is to be weighed with the

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evidence of the injured witness coupled with the medical evidence available in this case. P.W1 to P.W.5 alone are ocular witnesses. They are also the injured witnesses. P.w.1 has not assigned any specific overt-act against any of the accused in this case. He speaks only about the occurrence and also about the filing of the complaint Ex P1.

9a. P.W.2 in his evidence would depose that A2 has assaulted him with a knife on his right knee and also on the left thigh. According to him, A5 has assaulted him with iron pipe on the right hand . A4 has assaulted him with iron pipe on the right hand and A3 has assaulted him with iron pipe on the right hand. He would further depose that A2 has assaulted P.W.3 on the right hand with a knife and A8 has caused a cut injury on the head of P.W.3. P.W.2 was examined by P.W.23 doctor and also by P.W.17 the doctor. P.W.23 the doctor has examined P.W.2 and issued Ex P77 copy of the accident register which shows that a cut injury measuring 1 cm was seen on the right elbow and another cut injury was seen on the right knee of P.W.2.

9b. According to P.W.17, the doctor, who had given his opinion on the basis of the injury sustained and X-ray report that the injuries sustained by P.W.2 on the right leg is a fractured injury which is grievous in nature. To that effect P.W.17 the doctor has issued Ex P54 wound certificate. There is no corresponding injury on the right hand to implicate A3 to A5 against P.W.2 as deposed by P.W.2. So, as against A3 , A4 , and A5, there is no overt-act has been made out against P.W.2. Even though P.W.2 would depose that A8 had caused a cut injury on the head of P.W.3 and A2 has caused injury on the right hand of P.W.3 with a knife, the said evidence was not corroborated by any medical evidence.

9c. According to P.W.2, A5 has assaulted P.W.3 with iron pipe on the hand. But P.W.3 himself says that A5 has assaulted him on the shoulder. But this evidence was also not corroborated by any medical evidence because P.W.3 was examined by P.W.23. According to the Doctor's evidence, one cut injury was seen on the right elbow of P.W.3 and there was a cut injury measuring 2 cm on the back of the head of P.W.3 and blood was oozing out from the right ear. Ex P75 is the wound certificate. So the overt-act suggested against A2, A8 and A5 against P.W.3 by P.W2 is not supported by medical evidence.

9d. P.W.3 would depose that at the time of occurrence, A9 had assaulted him with an iron pipe on the right hand and A8 had assaulted him on the head with a knife and A2 had assaulted him with a knife on the right wrist and A5 has assaulted him with iron pipe. P.W.3 was examined by P.W.23 and issued Ex P75 wound certificate. There is no corresponding overt-act as spoken to by P.W.3 as seen in Ex P75 wound certificate given by Dr. P.W.23 regarding the

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injuries on the right wrist or on the right shoulder said to have been caused by A2 and A5 respectively. But as far as A8 is concerned, according to P.W.3, A8 had assaulted him with a knife on the head. This has been corroborated by the medical evidence of P.W.23 and Ex P75 wound certificate which shows that P.W.3 had sustained a cut injury measuring 2 cm on the back of the head.

9e. P.W.4 another injured witness would depose that at the time of occurrence, A7 had assaulted on the left side of the head with a knife and A6 had assaulted on the right leg and right arm with iron pipe and A4 had assaulted him with iron pipe on the right arm. P.W.4 was examined by the Doctor P.W.23 and issued Ex P73 the copy of the accident register. In Ex P73 the copy of the accident register the following injuries were noted on P.W.4.

"1.Cut injury on the left elbow measuring 2 cm
2. Cut injury on the head measuring 1 cm
3. Contusion on the chest.''

9f. So,the injuries mentioned under Ex P73 correspondence only to the overt-act attributed to A7 and A5 only and there is no corresponding injury seen in Ex P73 for the overt-act attributed against A4 and A6 as against P.W.4.

10. According to P.W.5, she was assaulted on the left cheek with a knife by A6 and the left wrist with iron pipe by A7 and A2 and A8 have repeatedly assaulted P.W.2 and P.W.3. But P.W.2 and P.W.3 have not implicated A2 and A8 with any overtact. P.W.5 was examined by the doctor P.W.23 and issued Ex P74 copy of the accident register. In Ex P74 copy of the accident register,the following injuries were noted on P.W.5.

"1. 3 cm cut wound left side chest.
2. 2cm cut right hand elbow
3.ring finger was cut and hanging on the right hand".

So,the injuries mentioned in Ex P74 for P.W.5 do not correspond with the evidence of P.W.23 to implicate A6 and A7 against P.W.5.

11. Under the above circumstances, A2, A5, A7 and A8 alone are liable to be convicted against the charges as mentioned hereunder. A2 is liable to be convicted and sentenced under Section 326 of IPC, 148 of IPC and 452 of IPC. A5, A7, and A8 are liable to be convicted and sentenced under Sections 148,452 and 324 of IPC.

12. Mr.S.Doraisamy, learned counsel appearing for the appellants would represent that another First Information Report was preferred by the mother of the deceased against the prosecution witnesses in respect of the same occurrence in which the mother of the deceased was also sustained injuries at the hands of the prosecution witnesses. Ex D2 is the First Information report filed by the mother of the deceased dated 8.10.1996 But the occurrence,

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according to the prosecution case, took place on 23.6.1996 at 8.30 p.m but Ex D2 was preferred only on 8.10.1996 ie., 3 ½ months, after the date of this occurrence. So it cannot be said that both the occurrence took place at one and the same time.

13. Today, the learned counsel appearing for the appellants/A2,A5,A7 and A8 has filed a petition in Crl.M.P.No. 364 of 2007 under Section320 of Cr.P.C. contending that the said convicted accused have entered in to a compromise with P.W.2 Santhosh, P.W.3 Suresh, P.W.4 Ramesh and P.W.5 Pappathi. The victim P.W.2 is before this Court and he says that instead of convicting and sentencing A2 under Sections 148,452 and 326 of IPC, he will be satisfied with a compensation of Rs.5000/-(Rupees Five thousand) only. P.W.3 is present before this Court. He would represent that instead of convicting and sentencing A8 under Sections 148,452 and 324 IPC, he will be satisfied with a compensation of Rs.3,000/-(Rupees three thousand) only. P.W.4 is present before this Court today. He would represent that instead of convicting and sentencing A5 and A7 under Sections 148,452, and 324 of IPC, he will be satisfied if a compensation amount of Rs.3,000/(A5-Rs 1500/- and A7-Rs 1500/-)is ordered to be paid by A5 and A7.

14. The learned Additional Public Prosecutor would represent that in a case of similar nature, the Honourable Apex Court in Ram Lal and another-v- State of Jammu and Kashmir(AIR 1999)Supreme Court 895) has held that even in a case falls under Section 326 of IPC , if the victim is willing to compound the offence with the accused concerned, then the Court taking into consideration ,the facts and circumstances of the parties, can pass suitable orders. In the above said dictum, the accused who were convicted and sentenced under Section 326 of IPC by the trial Court and on appeal before the Apex Court an application filed under Section 320 of Cr.P.C., The Court after admitting the application has modified the sentence of the accused to a period already undergone instead of six months . While applying the same yardstick in this case also, I am of the view that since both the victim as well as the accused have compounded themselves, the appeal can be disposed of by awarding the compensation as claimed by the victim as indicated above.

15. In the result, the appeal preferred by A2, A5,A7, and A8 are dismissed. A2 is convicted under Sections 148,452 and 326 of IPC and the sentence alone is modified to that of a compensation of Rs.5,000/-(Rupees Five thousand) only. A8 is convicted under Sections 148,452 and 324 of IPC and sentence alone is modified to that of a compensation of Rs.3,000/-(Rupees three thousand) only. A5 and A7 are convicted under Sections 148,452 and 324 of IPC and sentence alone is modified to that of a compensation of Rs.3,000/-(Rupees three thousand) only(A5-Rs. 1500/- and A7-Rs 1500/-). The appeal is disposed of in the above lines. The appeal preferred by

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A3, A4,A6, and A9 is allowed and are acquitted from the charges levelled against them. As far as A1 is concerned, death memo is filed and recorded. The appeal abates as against A1. The learned counsel appearing for the appellants/A2,A5,A7,and A8 submits that the above accused may be given a weeks time to pay the abovesaid amount of compensation. A2, A5,A7 and A8 are directed to appear before this Court on 27.6.2007 for payment of the compensation. The fine imposed by the trial Court against A2, A5,A7 and A8 will sustain. The fine amount paid by A3, A4, A6 and A9 shall be refunded to them.

Call on 27.6.2007

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To

1. VII Additional Sessions Judge, Chennai
2.-do- through the Principal Sessions Judge, Chennai
3.The Public Prosecutor, High Court, Madras
4. The Inspector of Police,
V-1,Villivakkam Police Station, Chennai-49

5. The X Metropolitan Magistrate, Chennai.

6. The Section Officer,
Criminal Section,
High Court, Madras.

(for calling the case on 27.6.07)

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